IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 798 (M/S) of 2006

Rajendra Singh, aged adult, s/o Banta Singh
R/o village Rampura, Rudrapur, Teshil Kichha District Udham Singh Nagar. .....Petitioner

Versus

1. State of Uttaranchal, through Collector Udham Singh Nagar.
2. Prescribe Authority, Udham Singh Nagar at Rudrapur.....Respondents.

Counsel for the Petitioner Sri M.C. Pandey, assisted by Sri Rajesh Joshi, Standing Counsel for the respondents.

Dated 27.6.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 5.4.2006 passed by the District Judge, Udham Singh Nagar, by which application under section 5 of the limitation Act has been rejected.

Briefly stated, notice under section 4(1) of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act 1972 was issued against the petitioner in respect of plot

no. 265 Min and 269 Min measuring 40 Bigha in village Rampura, Tehsil Kichha, District Udham Singh Nagar. The eviction order was passed on 6.10.2001 ex parte. However when the petitioner came to know, he filed the appeal alongwith an application under section 5 of the limitation Act. The District Judge has rejected the application.

The petitioner has also filed a suit for declaration and the same is pending.

The petitioner has challenged the order passed by the District Judge, by which the application under section 5 of the limitation Act has been rejected.

The petitioner has submitted that the ground mentioned in the application under section 5 of limitation Act shows that the petitioner was ill. The said paragraph is quoted below:-

fnukad 24-5-2005 dks izFkhZ v/khuLFk U;k;ky; x;k o vkyksP; vkns'k dh udy gsrq izFkZi= fn;k udy mls 25-5-2005 dks fey h 25-5-2005 dks lka; lsgh izFkhZ vLoLFk gksx;k vkSj ihfy;k jkse lsxzLr gks x;kA izFkhZ fnukad 30-5-2005 rd yxkrkj chekj o py us fQjus esa vl eFkZ jgkA fnukad 31-5-2005 dks izFkhZ U;k;ky; vk;k o vkyksP; vkns'k dsfo:} vihy rS;kj djkdj izFkhZus vius ihfy;k jkse dk ?kjsyw mipkj djk;kA

The need of society is that there should be justice oriented approach and the appeal should not be rejected only

on the ground of technicalities. The Apex Court held in (2001) 8 SCC 151, M.S. Grewal Vs. Deep Chand Sood as under:-

"Law courts will loss their efficacy if they cannot possibly respond to the need of the society-technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In the interest of justice the delay in filing the appeal is condoned. The matter is sent back to the appellate Court for deciding the appeal in accordance with law.

Subject to the aforesaid, the writ petition is allowed. No order as to costs.

Dated: 27.06.2006 (Rajesh Tandon, J.)